

U.S.S.N. 09/853,475

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REMARKS

In the Office Action of September 1, 2005, claims 1-14 are pending.

The Office Action states that claims 1-14 stand rejected under 35 U.S.C. 102(e) as being anticipated by Collines et al. (U.S. Pub. No. 2005/0159128 A1). Applicants, respectfully, traverse and submit that Collines is not a valid reference for which any of the claims can be rejected.

For a claim to be rejected under 35 U.S.C. 102(e) the invention claimed must be (1) described in an application for patent, published under section 122(b), by another filed in the United States before the invention by the Applicants for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the Applicants for patent. In other words, in order for a reference to be valid under 35 U.S.C. 102(e) it must have an earlier filing date than that of the claimed invention.

Referring to MPEP 706.02(f)(1), since the Collines reference is not based nor does it continue from an International Application, the date of Collines that can be relied upon is the earliest U.S. filing date for which a benefit is properly sought via 35 U.S.C. 119(e) or 35 U.S.C. 120. Collines is a continuation of application No. 09/886,516, filed on June 21, 2001, which is now U.S. Pat. No. 6,859,641. Thus, the earliest filing date for Collines is June 21, 2001.

The filing date of the presently claimed invention is May 11, 2001, which is clearly prior to June 21, 2001. Thus, Collines is an invalid 35 U.S.C. 102(e) reference. Applicants further submit that since the filing date of the claimed invention antedates the earliest filing date of Collines, that Collines would be an improper reference under any anticipation based or obviousness type rejection. Thus, claims 1-14 are in a condition for allowance.

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In light of the remarks, Applicants submit that all the objections and rejections are now overcome. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, he is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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